

1
2
3
4
5
6
7 IN THE UNITED STATES DISTRICT COURT
8 FOR THE DISTRICT OF OREGON
9

10 ROBERT SHANKLIN,)
11 Plaintiff,) Case No. CV 09-1127-HU
12 v.)
13 SLEEP COUNTRY USA, INC.,) OPINION AND
14 Defendant.) ORDER
15 _____)

15 Donald W. Heyrich
16 Heyrich Kalish McGuigan
17 1325 Fourth Avenue, Suite 540
18 Seattle, Washington 98101
19 Attorney for plaintiff

18 Michael G. McClory
19 Bullard Smith Jernstedt Wilson
20 1000 S.W. Broadway, Suite 1900
21 Portland, Oregon 97205

21 John C. Fox
22 Alexa L. Morgan
23 Manatt Phelps & Phillips
24 1001 Page Mill Road, Building 2
25 Palo Alto, California 94304

26 Alison S. White
27 Manatt Phelps & Phillips
28 One Embarcadero Center, 30th Floor
San Francisco, California 94111
Attorneys for defendant

26 ///

1 HUBEL, Magistrate Judge:

2 This is a putative class action, filed on September 23, 2009,
3 alleging that defendant Sleep Country USA, Inc. (SCUSA) failed to
4 pay plaintiff Robert Shanklin and others similarly situated
5 commissions owed upon termination. SCUSA moves the court for an
6 order dismissing or staying the action, on the ground that the
7 putative plaintiffs and the claims asserted are substantially
8 similar to, or duplicative of, an earlier-filed action in the
9 Western District of Washington, Patey et al. v. The Sleep
10 Train/Sleep Country USA, CV 09-1239. See SCUSA's Request for
11 Judicial Notice, Exhibit 1 (complaint filed in Patey case).

12 The principles of comity allow a district court to decline
13 jurisdiction over an action where a complaint involving the same or
14 substantially similar parties and issues has already been filed in
15 another district. Barapind v. Reno, 225 F.3d 1100, 1109 (9th Cir.
16 2000). Thus, when actions are filed in courts of concurrent
17 jurisdiction, the court which first acquired jurisdiction should
18 try the case. Pacesetter Systems Inc. v. Medtronic, Inc., 678 F.2d
19 93, 95 (9th Cir. 1982). Application of the "first to file" rule
20 involves consideration of three factors: 1) chronology; 2) identity
21 of issues; and 3) identity of parties. Id. The district court in
22 which the later action was filed has discretion to transfer, stay
23 or dismiss the second action in the interests of efficiency and
24 judicial economy. Amerisourcebergen Corp. v. Roden, 495 F.3d 1143,
25 1156 (9th Cir. 2007) [Ferguson, J., concurring, citing Cedars-Sinai
26 Med. Ctr. v. Shalala, 125 F.3d 765, 769 (9th Cir. 1997)].

1 Shanklin concedes that the first to file rule applies, but
2 asks that the court transfer this case to the Western District of
3 Washington, rather than dismissing the complaint without prejudice
4 or entering a stay. Shanklin argues that the Washington court can
5 "better decide whether to consolidate the two actions, stay one of
6 the cases, or dismiss either action." Plaintiff's Response, p. 1-2.
7 Shanklin contends that dismissal could prejudice him by depriving
8 him of his status as a class representative, "essentially depriving
9 him of any substantive control over the lawsuit against Sleep
10 Country." Id. at 4. SCUSA responds that Shanklin can maintain
11 control over his own lawsuit by opting out of Patey and pursuing
12 his claims as an individual, thereby eliminating the potential for
13 such prejudice.

14 Shanklin also asserts that he may be prejudiced if this case
15 is dismissed because federal jurisdiction over his claims is based
16 on the Class Action Fairness Act, while jurisdiction in the Patey
17 case is supplemental; thus, if the Patey court declined to exercise
18 supplemental jurisdiction over the Oregon claims, Shanklin would be
19 without a forum for his claims. SCUSA counters that even if the
20 Patey court should decline to exercise jurisdiction over the Oregon
21 claims, Shanklin is free to refile his action, with the applicable
22 statute of limitations having been tolled.¹

23
24 ¹ SCUSA contends that the Patey case is a re-filed version of
25 an earlier suit, Campbell et al. v. Sleep Train/Sleep Country,
26 filed in the Northern District of California on December 24,
27 2008. SCUSA represents that the Campbell case was dismissed
pursuant to an agreement of counsel that the Washington and
Oregon plaintiffs would bring their claims in the Western
District of Washington, and that the statute of limitations would

1 In view of Shanklin's arguments about possible prejudice,
2 this case is transferred to the Western District of Washington.
3 This court will defer to the Washington district court to determine
4 whether Shanklin should be dismissed without prejudice.

5 IT IS SO ORDERED.

6
7 Dated this 19th day of January, 2010.

8
9 /s/ Dennis James Hubel

10 Dennis James Hubel
11 United States Magistrate Judge
12
13
14
15
16
17
18
19
20
21
22
23
24
25

26 _____
27 be tolled until September 1, 2009. SCUSA has not proffered
28 admissible evidence on this point, however.